IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMARY SUIT NO.3019 OF 2002

Tata Motors Limited Plaintiff

versus

M/s.V.B.Patel Auto (Gujarat) Ltd. and others Defendant

G.R.Joshi with Mr.A.V.Joshi and Mr.Vipul Bilve i/by Mulla & Mulla for plaintiff

Ms.Hera Chhedai i/by Haridas & Co. for defendant

CORAM : S.C.DHARMADHIKARI, J.

DATE : 27th June 2005

PC :

1. Mr.Joshi appearing for plaintiff seeks decree only against first defendant. He states that as far as defendants 2 and 4 are concerned, an order granting unconditional leave has been passed by this Court, which is under challenge before Hon'ble Supreme Court in a special leave petition. Insofar as first defendant is concerned, it is not in dispute that upon appearance being filed by the defendant, the plaintiffs took out a Summons for Judgement No.312 of 2003 which was placed for hearing and

final disposal before a learned Single Judge of this Court. The learned Single Judge after hearing parties and perusing the record passed a reasoned order directing first defendant to deposit a sum of Rs.4.68 lakh in this Court within a period of 12 weeks from the date of order i.e. 6th October 2004.

2. Mr.Joshi submits that this order has not been complied with and the amount has not been deposited and the Prothonotary and Senior Master has issued a non deposit certificate. Hence plaintiffs are now entitled to a judgement in their favour.

3. Learned advocate for the first defendant states that first defendant has filed an appeal before a Division Bench of this Court. However, she was fair enough to point out that there are no instructions forthcoming to prosecute the appeal. Further, there are no instructions insofar as deposit of the amount as directed by the learned Single Judge. She states that even no instructions are forthcoming with regard to seeking of time or extension appropriately for making such deposit. She, therefore, prays that appropriate orders be passed.

4. In the light of the fact that the suit is maintainable as a summary suit and first defendant contested the Summons for Judgement and after considering its reply a reasoned order has been passed which remains undisturbed, the plaintiffs are entitled to a judgement in their favour in terms of Order XXXVII of CPC, 1908. Even otherwise, in the absence of any instructions to the first defendant's advocate and the order not being interfered with in appeal or otherwise, the plaintiffs are entitled to a decree as prayed. Suit is based upon 101 Bills of Exchange coupled with a Memorandum of Understanding admitting liability. There shall be a decree as prayed. However, further interest from the date of decree till payment and realisation would be @ 12% p.a.. Office to draw up a decree accordingly. Computation of advocates' costs as per rules.

(S.C.DHARMADHIKARI, J.)